

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

PLM II

11534

FILE: B-194594

DATE: September 27, 1979

MATTER OF: James T. Fielding - Waiver of overpayment

DIGEST: Employee was erroneously paid for overtime when he was on a regular 56-hour workweek, but failed to notify payroll personnel that his pay included payments for overtime. Request for waiver is denied since the employee should have recognized the increase in pay and notified payroll personnel that his pay included payments for overtime.

[Request for Waiver of Debt]

Mr. James T. Fielding requests reconsideration in part of our Claims Division July 12, 1978 denial of his application for waiver of his debt to the United States in the amount of \$690.71. The debt arose from overpayment of pay due to erroneous payment of overtime during the period September 14 through November 8, 1975.

Mr. Fielding was initially employed by the Department of the Navy as a Fire Protection Inspector on a regular 40-hour workweek, but he was unable to perform all his duties during this time schedule. Pending approval of a 56-hour workweek with 15 percent premium pay, he was authorized to work overtime to accomplish the requirements of the position. After the 56-hour workweek was approved effective September 14, 1975, overtime hours were discontinued. However, through erroneous input to the payroll computer, he was paid overtime pay for 4 pay periods, creating an overpayment of \$573.95. The record indicates that during the period September 14 through October 11, 1975, he was also underpaid premium pay in the amount of \$116.76.

Mr. Fielding, in his original request for waiver, contended that he noticed an irregularity in his pay during the month of October and notified the Payroll Department at the Jacksonville Naval Air Station, but that he was unable to explain the error to appropriate personnel until the last of October. He further indicated that the overpayment should be waived because of the administrative nature of the error. Denial of waiver was made due to his being aware of the error and though he attempted to have it corrected, he has a duty to retain such funds for subsequent refund to the Government.

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In his appeal, Mr. Fielding contends that the amount of the overpayment is \$573.95 (\$690.71 less the \$116.76 underpaid premium pay), that overpayment resulted from errors due to lack of coordination between the Personnel Department and the Accounting Division, and that the repayment is a burden created by a situation that he did not control. Further, he states that he was not aware of the overpayment since he assumed management was correct.

Subsection 5584(a) of title 5, United States Code (1976), provides in pertinent part that a claim of the United States against a person arising out of an erroneous payment of pay or allowances to an employee, the collection of which "would be against equity and good conscience and not in the best interests of the United States," may be waived in whole or in part. Subsection 5584(b) further provides that the Comptroller General or the head of the agency, as the case may be, may not exercise his authority to waive any claim—

"(1) If, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim;"

Implementing the statutory provision cited above, section 91.5 of title 4, Code of Federal Regulations (1978), provides in pertinent part, for waiver of an erroneous payment whenever:

"(c) Collection action under the claim would be against equity and good conscience and not in the best interests of the United States. Generally these criteria will be met by a finding that the erroneous payment of pay or allowances occurred through administrative error and that there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or member or any other person having an interest in obtaining a waiver of the claim. Any significant unexplained increase in pay or allowances which would require a reasonable person to make inquiry concerning the correctness of his pay or allowances, ordinarily would preclude a waiver when

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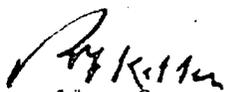
the employee or member fails to bring the matter to the attention of appropriate officials. Waiver of overpayments of pay and allowances under this standard necessarily must depend upon the facts existing in the particular case. * * *" (Emphasis supplied.)

With respect to the foregoing, if an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review such documents for accuracy or otherwise fails to take corrective action he is not without fault and waiver will be denied. B-188822, June 1, 1977.

The fact that the overpayments were made through administrative error does not relieve an individual of responsibility to determine the true state of affairs in connection with overpayments. It is fundamental that persons receiving money erroneously paid by a Government agency or official acquire no right to the money; such persons are bound in equity and good conscience to make restitution. See B-188595, June 3, 1977, B-124770, September 16, 1955, and cases cited therein.

In the present case, the record shows that statements of Earnings and Deductions given to Mr. Fielding after each pay period involved showed that he was being paid for overtime, even though he was on a regular 56-hour workweek. He was at least partially at fault in failing to recognize the increase in his pay and to notify payroll personnel that his pay included payments for overtime during the pay periods where the administrative errors occurred. Since he had a duty to return the excess sums or set aside this amount for refund at such time as the administrative error was corrected, he is not free from fault, and collection action is not against equity and good conscience nor contrary to the best interests of the United States.

Accordingly, the denial of the waiver is sustained.


Deputy Comptroller General
of the United States